IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

FRIDAY, THE 28TH SEPTEMBER 2007 / 6TH ASWINA 1929

WP(C).No. 7491 of 2007(P)

PETITIONER:

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1. MISS.LINIMOL K.,
   D/O.SRI.K.A.PAPPACHAN,
   KALLAPPILLIL HOUSE, AYROOPADAM P.O.,
   UPPUKANDOM, KOTHAMANGALAM,
   ERNAKULAM DISTRICT.

2. SRI.K.A.PAPPACHAN,
   KALLAPPILLIL HOUSE,
   AYROORPADAM P.O.,
   ERNAKULAM DISTRICT.

BY ADV. SRI.M.A.ASIF

RESPONDENTS:

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1. KERALA STATE ELECTRICITY BOARD,
   VYDYUTHI BHAVAN, PATTOM,
   THIRUVANANTHAPURAM-4, REP. BY ITS SECRETARY.

2. CHIEF ENGINEER (H.R.M.),
   KERALA STATE ELECTRICITY BOARD,
   VYDYUTHI BHAVAN, PATTOM,
   THIRUVANANTHAPURAM-4.

BY ADV. SRI. ASOK M.CHERIYAN, SC, KSEB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

V.GIRI, J.

W.P.(C).No.7491 of 2007 P

Dated this the 28th day of September, 2007.

JUDGMENT

The second petitioner was an employee of the Electricity Board. The first petitioner is the daughter of the second petitioner. The second petitioner met with an accident in 1980 while in service. One of the legs of the 2nd petitioner was amputated above the knee in 1997. According to the 2nd petitioner, he continued in service till 23.3.2001. On 24.3.2001 he made Ext.P1 application to the Executive Engineer for invalid pension, which essentially means that he may be permitted to retire on the ground that he has become invalid prior to his normal date of retirement. Enclosed along with Ext.P1, was the original medical certificate issued by a Government doctor attached to the Adimali Taluk Hospital. Apparently, the Board wanted the 2nd petitioner to be again examined by another doctor. Second petitioner was, therefore, examined by the Medical Board and it is accepted that he was certified as an invalid person. This fact is referred to in Ext.P2 order issued by the Chief Engineer of the Electricity Board,

wherein it is stated that the District Medical Board, Idukki, after examining the 2nd petitioner found that the incumbent is completely and permanently incapacitated for further service on any count in the Kerala State Electricity Board.

2. Ext.P2 also refers to the fact that thereafter the incumbent was directed to the State Medical Board, which also confirmed the opinion of the District Medical Board. It is thus that the Board, in its meeting held on 23.9.2003, decided to allow the 2nd petitioner to retire on invalid pension with effect from 14.6.2001, viz., the date of the certificate issued by the District Medical Board. Ext.P2 proceedings, inter alia, refers to Ext.P1 application dated 24.3.2001.

3. It is common case that the normal date of retirement of the 2nd petitioner was 31.3.2002. The 1st petitioner then applied for employment under the scheme for compassionate appointment of dependents of the Board employees, who die in harness or are permanently disabled and retirie on invalid pension. The same is governed by Regulations called “Kerala State Electricity Board

[Appointment of Dependents of Board Employees, who Die in Harness or are Permanently Disabled and are retiring on Invalid Pension] Regulations" {hereinafter referred to as **"the Regulations"**}. The said application was rejected on the ground that under Regulation 7, a dependent of a Board employee retiring on invalid pension shall be eligible for employment assistance only if the period between the invalid retirement and the normal date of superannuation is one year or more. It is stated that since the invalid retirement is only 14.6.2001, the date mentioned in Ext.P2 and the normal date of superannuation is 31.3.2002, the period in between is less than one year and therefore, the dependent is not eligible to get employment assistance on compassionate ground. The stand taken in Ext.P2 is affirmed in Ext.P3.

4. In the counter affidavit filed by the Board, reference is made to Regulation 7 which was brought in by the Amendment of 1992. The same is extracted hereunder.

> **"The Dependent of a Board Employee who retires on the ground of mental infirmity or who retires on being permanently incapacitated to work, such**

> **permanent incapacitation to work being certified by an approved Medical Board duly constituted by Government, shall also be eligible for appointment under these Regulations, provided the period from the date of such retirement to the normal date of retirement of such Board Employees on superannuation is one year or more."**

5. It is contended by the Board that it is only when a certificate of invalidity or disability is issued by the Medical Board that a person can be retired on grounds of disability and on invalid pension and since the date of retirement has been given as 14.6.2001, under Regulation 7, the 1st petitioner was not entitled to make an application for employment assistance and therefore, is not eligible to be considered for compassionate appointment.

6. I am unable to agree with the stand taken by the Board in this regard. Regulations are framed essentially to streamline and discipline the applications made by dependents of employees who die in harness or are permanently disabled or are retiring on invalid pension. The period of one year, between the date of retirement on invalid

pension and the actual date of retirement, is mentioned essentially to see that an employee, who otherwise claims a disability to continue in service, does not take advantage of this provision by continuing in service till the eve of his retirement and then makes an application to facilitate his dependent to get an entry into the service, otherwise than in the normal course of recruitment. The period of one year prescribed in that behalf will have to be construed as a reasonable period, before which the employee must have apprised the Board of his disability to seek permission to retire on invalid pension.

7. In the present case, significantly, the 2nd petitioner had met with the accident in 1980 and his leg had to be amputated above the knee in the year 1997. He had actually made an application for retirement on invalid pension on 24.3.2001, which is more than one year prior to the date of his normal retirement. May be, he may have kept in mind the provision relating to appointment of dependents of employees who retire on invalid pension. There is nothing

wrong in that. But, what is important is that the 2nd petitioner, did apply more than one year prior to the date of his normal retirement and even at the time when the application was made, he was disabled. He had actually become disabled earlier and therefore, he was incapable of carrying on the work. This was certified by the doctor of a Government Hospital and the view expressed in the certificate was confirmed by the District Medical Board and State Medical Board and therefore, it is taken into account by the Board. The mere fact that a delay occurred in the District Medical Board issuing a certificate cannot be attributed to the petitioners to deprive them of their legitimate chance, which otherwise they may have, to be considered by the Board under compassionate grounds. I should also note that the disability which the second petitioner was suffering from on 24.3.2001, the date of Ext.P1 application, was the disability which was assessed by the District Medical Board and the State Medical Board, though on a later date. The instant

case is not one where the disability itself is incurred within the period mentioned in Regulation 7.

8. Learned counsel for the petitioners relies on the decision of a Division Bench reported in **Accountant General v. Shyson George {2005(2) KLT 137}**, wherein this court held that the eligibility of dependent major children of a deceased pensioner to receive family pension will arise from the date following the death of the pensioner and not from the issuance of the medical certificate. The observation made by the Bench in paragraph 5 is significant and is quoted hereunder:

> **"It is not the date of issuance of the eligibility certificate that is material, it is actually the date of accrual of the disability that is relevant. If for some reasons either the competent Medical Officer or the Medical Board as the case may be delays the issuance of certificate of disability, a person in want shall not suffer. It is the date of occurrence of the disability that is crucial and relevant and the rest are irrelevant. If the disability was there prior to the death of the protector-pensioner, necessarily, the State should continue the support from the day following the death of the pensioner. Needless to say that if the disability is subsequent to the death of the pensioner, the eligibility starts only then. Therefore,**

> **we make it clear that the eligibility for family pension under special circumstances referred to in Ext.P8 should be understood as the date of occurrence of the disability and not as the date of issuance of a certificate by the Medical Officer or the Medical Board, as the case may be. Needless to say that the eligibility for family pension is only from the day following the death of the pensioner. If such an interpretation is not given to the provision, it would defeat the very purpose of R.90 of Part III K.S.R. In this context, it is worth noting that in *S.K.Mastan Bee v. General Manager, South Central Railway {[2003] 1 SCC 184}*, the Apex Court has gone to the extent of declaring that denial of right of family pension amounts to violation of the guarantee assured to the citizens under Art. 21 of the Constitution of India."**

9. I am of the view that the prescription of one year mentioned in Regulation 7 will have to be construed in a reasonable manner. No doubt, the disability will have to be assessed by a doctor duly constituted by the Government, but where the Medical Board certifies the disability and the disability in the manner assessed and certified by the Medical Board was existing on a date anterior to the date of examination by the Medical Board, then the certificate of the Medical Board must, at least, relate back to the date on which the employee makes the application for permission to

retire on invalid pension. In my view, any other construction in relation to this case will cause unforeseen hardship to a large number of deserving persons.

10. At any rate, insofar as the present case is concerned, since the second petitioner had suffered disability leading to the application, as mentioned above, as early as in 1997 and his normal date of retirement was 31.3.2002, he had actually submitted Ext.P1 application on 24.3.2001, prior to the date of his normal date of retirement and there is uniformity in the opinion given by all the Medical officers regarding the disability of the second petitioner, a more reasonable view ought to have been taken by the Board.

11. For all these reasons, the writ petition is allowed. Exts.P4 and P7 are set aside. The first respondent is directed to reconsider the case of the first petitioner as per the Regulations treating the case of the second petitioner in the light of the observations made in this judgment and take an appropriate decision on the application made by the first

petitioner, within three months from the date of receipt of a copy of this judgment.

Writ petition is allowed as above.

Sd/-
(V.GIRI)
JUDGE

sk/

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P.S. To Judge.